

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

**FLYPSI, INC. (D/B/A FLYP),**

**Plaintiff,**

**vs.**

**GOOGLE LLC,**

**Defendant.**

**Civil Action No. 6:22-cv-31-ADA**

**JURY TRIAL DEMANDED**

**OMNIBUS ORDER ON THE PARTIES' DISPUTED PRE-TRIAL MOTIONS**

After considering briefing and holding oral arguments on January 17, 2024, the Court hereby enters its rulings on the following disputed pre-trial motions:

**Plaintiff Flypsi, Inc. (d/b/a Flyp)'s Disputed Pre-Trial Motions:**

Flyp's Motion for Partial Summary Judgment Concerning Google's Affirmative Defenses (Dkts. 149, 181, 198) is **DENIED**. The Court further **HOLDS** that prosecution history estoppel does not preclude Flyp from asserting infringement of the asserted '770 and '105 patent claims under the doctrine of equivalents with respect to the "bridge telephone number" limitation.

Flyp's Motion for Partial Summary Judgment Concerning Infringement of the '094, '554, and '585 Patents (Dkts. 150, 179, 200) is **DENIED**.

Flyp's Motion for Partial Summary Judgment Concerning Burner References, Obviousness, and Google's 35 U.S.C. § 112 Arguments (Dkts. 151, 183, 202) is **DENIED**.

Flyp's Motion to Strike Expert Reports of Dr. Oded Gottesman, Ph.D., regarding Noninfringement and Invalidity (Dkts. 152, 173, 196) is **DENIED**.

Flyp's Motion to Strike Expert Opinions of Chris Martinez on the Cost of Non-Infringing Alternatives (Dkts. 153, 176, 208) is **DENIED**.

**Defendant Google LLC's Disputed Pre-Trial Motions:**

Google's Motion to Dismiss the Second Amended Complaint (Dkts. 108, 110, 114) is **DENIED**.

Google's Motion to Stay Pending IPRs (Dkts. 127, 129, 131) is **DENIED**.

Google's Motion for Judgment on the Pleadings Under 35 U.S.C. § 101 of All Asserted Claims (Dkts. 142, 185, 199) is **DENIED** under *Alice* Step 1. The Court further **HOLDS** that all asserted claims are directed to eligible subject matter under *Alice* Step 1 as a matter of law. Accordingly, Google's § 101 defense will not be tried.

Google's Motion for Summary Judgment of No Willfulness (Dkts. 143, 177, 211) is **DENIED**.


Google's Motion for Partial Summary Judgment of Non-Infringement of the '770 and '105 Patents (Dkts. 145, 172, 209) is **DENIED**. The Court further **HOLDS** that prosecution history estoppel does not preclude Flyp from asserting infringement of the asserted '770 and '105 patent claims under the doctrine of equivalents with respect to the "bridge telephone number" limitation.

Google's Motion for Partial Summary Judgment of Non-Infringement of the '094, '554, and '585 Patents (147, 174, 210) is **DENIED**.

Google's Motion to Exclude Opinions of Mr. Justin Lewis related to his reliance on irrelevant advertising revenue (Dkts. 154, 178, 201) is **DENIED**; however, the Court **ORDERS** *in limine* that neither Flyp, its counsel, nor any witnesses shall introduce, rely upon, or make reference to the amount of Google's total advertising revenue.

Google's Motion to Exclude Opinions of Mr. Justin Lewis related to his failure to apportion (Dkts. 154, 178, 201) is **DENIED**.

SIGNED this 31<sup>st</sup> day of January, 2024.



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ALAN D ALBRIGHT  
UNITED STATES DISTRICT COURT JUDGE